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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-first session
Agenda item 1 (c)

ORGANIZATION OF WORK: METHODS OF WORK OF THE SUB-COMMISSION

Common position of the Sub-Commission on the Promotion and Protection of Human Rights on future tasks, length of sessions, working methods, composition and election of members

Note by the Chairman

Introduction

1. At its fifty-first session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, having been renamed by the Commission on Human Rights the Sub-Commission on the Promotion and Protection of Human Rights, as proposed in recommendation 12 (a) of the Bureau of the fifty-fourth session of the Commission (see E/CN.4/1999/104), held a thorough discussion of its future functions and the consequences this should have for its working time, its methods of work, its composition and the election of its members. The conclusions set out below were reached unanimously, unless otherwise specified. Reference is also made to the summary records of its 21st meeting, held on 18 August 1999 (E/CN.4/Sub.2/1999/SR.21) including the statement made by Mr. Marc Bossuyt on that occasion.

2. In its discussions the Sub-Commission took into account the recommendations made by the Bureau of the fifty-fourth session (1998) of the Commission regarding the rationalization of the work of the Commission and the Sub-Commission (E/CN.4/1999/104), the Sub-Commission's own review at its fiftieth session of its mechanisms intended to enhance its effectiveness (E/CN.4/Sub.2/1999/38), the observations made by the "like-minded States" to the recommendations of the Bureau (E/CN.4/1999/120, annex) and the position paper of the Asian group (E/CN.4/1999/124, annex).

A. Substantive tasks

3. In the light of its broad mandate and recognizing its primary function as a "think-tank", the Sub-Commission should have the possibility and the necessary conditions to enable it to deal with the major issues on the human rights agenda as it unfolds at the beginning of the next century, as requested by the Commission (see Bureau recommendation 12 (d)) and based on its own recommendations to the Commission. Taking into account that the process of standard-setting is nearly complete and that the main task in the future is to assist in finding ways to ensure that all established human rights are enjoyed by all, the major issues to be addressed by the Sub-Commission include the following:

(a) The administration of justice (arbitrary detention, impunity, derogation, emergency, independence of judges, etc.), especially with regard to implementation of standards in this field;

(b) The establishment of a social forum to facilitate more comprehensive and effective acts on economic, social and cultural rights;

(c) Examination of the impact of globalization, including the methods and activities of transnational corporations and their relationship to the implementation by Governments of human rights, the human rights implications of structural adjustment and the right to development;

(d) Prevention of discrimination and the promotion and protection of the rights of minorities and peoples, including indigenous peoples;

(e) Prevention of discrimination against migrants and other non-citizens.

B. Functions and methods of work

4. Improvement of cooperation with other human rights bodies. Broader and systematic consultation with other United Nations and regional human rights bodies should be ensured.

5. Improvement in the programme of studies: selection, preparation and examination. The Sub-Commission has now undertaken a reform of its programme of studies and endorses the recommendations made by the Commission and its Bureau (recommendation 12 (d)) on this subject. The subjects of studies will be chosen to meet the needs of the Commission and the treaty bodies and to explore core issues on the human rights agenda at the beginning of the new century. One type of study would examine obstacles to the implementation of human rights and ways to overcome them; a second type would identify situations or phenomena, existing or developing, with serious actual or potential implications for human rights, in order to obtain the knowledge required to propose appropriate responses. The revisions to the programme of studies are set out in the Guidelines for the application by the Sub-Commission of the rules of procedure of the functional commissions of the Economic and Social Council, finalized at its fifty-first session in 1999 (E/CN.4/Sub.2/1999/22, annex).

6. Country situations. Several members of the Sub-Commission favoured the proposal of the Bureau (recommendation 12 (e) (i)) that instead of country specific resolutions the outcome of the annual debate of the Sub-Commission on human rights violations in all parts of the world should be a summary for submission to the Commission. One member preferred that the annual debate on country situations be abolished, but if it was retained, country specific resolutions were preferable. Other members argued that the Sub-Commission should become more even-handed in identifying situations to be the subject of resolutions. The majority suggested that the Sub-Commission should continue to apply its expertise to country situations not under consideration at the Commission on Human Rights by adopting country-specific or thematic resolutions, decisions or statements by the Chair. The Sub-Commission should use such authority with restraint, however. In that context it should seek dialogue and cooperation with Governments, giving preference to the prevention of human rights violations, and ensure objectivity in the choice of situations addressed.

7. Resolutions and decisions under other agenda items. The Sub-Commission assumes that the recommendation by the Bureau to avoid resolutions related only to the agenda item on violations in any country, and was not intended to recommend the abolition of resolutions and decisions under other agenda items.

8. 1503 procedure. The Sub-Commission is of the opinion that the 1503 procedure should be maintained in its current four-stage form, but that there is room for improvement. The Sub-Commission agrees with the views put forward by the Working Group on Communications in document E/CN.4/Sub.2/AC.1/1999/CRP.1, which is annexed to the present document (annex I).

9. Working groups. The Sub-Commission endorses Bureau recommendation 12 (e) (ii) that the inter-sessional Working Group on Minorities should continue and that the Working Group on Indigenous Populations should continue until such time as the permanent forum for indigenous people within the United Nations has been established. The Sub-Commission does not, however, endorse the proposal that the Working Group on Contemporary Forms of Slavery should be terminated. That would eliminate a useful forum for non-governmental organizations committed to the prevention or abolition of some human rights violations of considerable contemporary significance and seriousness.

C. Sessions, composition and election of members

10. Length of sessions. The Sub-Commission cannot endorse the Bureau's recommendation that it should meet for two weeks only. It would be impossible to accomplish the substantial tasks involved in its mandate with the necessary quality unless it met for four weeks.

11. Number of members. The Sub-Commission unanimously holds that the number of members should not be reduced below 26. This is required in order to maintain the diversity in expertise and ensure participation from different cultures, traditions and subregions.

12. Election of members. The Sub-Commission unanimously holds that its members should not be nominated but elected. This is a more democratic approach.

13. Number of terms. There is no consensus within the Sub-Commission on whether there should be a restriction on the number of terms a member could serve. There was consensus, however, that if restrictions were to be applied, eight years would be too short.

14. Concurrent employment in the executive branch of Government. The Sub-Commission is of the view that it is not up to the Sub-Commission to take a position on the Bureau's proposal that the members of the Sub-Commission should not be employed concurrently in the executive branch of their Government.

15. Alternates. The Sub-Commission unanimously holds that the system of alternates should be maintained. It is of no cost to the United Nations and has a number of benefits, including increasing the number of specialists who become closely connected with and informed about the human rights work of the United Nations.

16. Taking into account the statement by the Bureau in observation 27 that "the cost of [the Sub-Commission's] annual session [is] higher than that of the Commission itself", the Sub-Commission refers to the table annexed to the present paper (annex II) setting out a comparison of the total annual costs of the sessions of the Commission, the Sub-Commission, the Human Rights Committee and the Committee on the Rights of the Child, information provided by the Office of the High Commissioner for Human Rights.

17. The Sub-Commission considers it necessary to be represented at the inter-sessional working group on the enhancement of the mechanisms of the Commission on Human Rights.

Annex I

Summary of informal discussions by the Working Group on Communications on the recommendation concerning the 1503 procedure contained in the report of the Bureau of the fifty-fourth session of the Commission on Human Rights

Introduction

1. On 27 July 1999, the Working Group on Communications held informal discussions on the recommendation II of the Bureau of the fifty-fourth session of the Commission on Human Rights concerning the 1503 procedure.

2. The Working Group had before it chapter III of the report of the Bureau of the fifty-fourth session of the Commission on Human Rights submitted pursuant to Commission decision 1998/112 (E/CN.4/1999/104) concerning the procedure established under Economic and Social Council resolution 1503 (XLVIII), and documents E/CN.4/1999/120 and E/CN.4/1999/124. The Working Group was also aware of the decision of the Economic and Social Council of 27 July 1999 initiating a year-long review of the mechanisms of the Commission, including the 1503 procedure, and of the need for the Sub-Commission and the Working Group to contribute to the deliberations on the subject.

3. The members of the Working Group considered that that body, which had met for 27 years, had the practical expertise and knowledge to comment on the proposals aimed at improving the 1503 procedure and that the outcome of its discussion should be brought to the attention of its parent body, the Sub-Commission.

4. This paper identifies common views, includes suggestions for improvements and summarizes other common observations.

Common views

5. The members of the Working Group considered that recommendation 11 of the Bureau would not improve the functioning of the 1503 procedure and might actually diminish its effectiveness.

6. The reasons invoked were the following:

(i) Recommendation 11 should more fully reflect the fact that the Working Group on Communications and the Sub-Commission have considerable experience in dealing with thousands of communications and many replies of Governments, and in identifying those situations which constitute a consistent pattern of gross and reliably attested violations of human rights for transmission to the Commission;

(ii) The Sub-Commission and its Working Group are comprised of individuals who are selected by a democratic process and who have a proven record of responding independently and with expertise to 1503 communications. Recommendation 11 would place almost

complete authority in the hands of a small committee selected by the Chairperson of the Commission, which might lack the diversity, expertise and independence of the members of the Working Group on Communications and the Sub-Commission.

(iii) Recommendation 11 has four steps: step 1, the Committee on Situations meets in September; step 2, the Committee meets again in January; step 3, the Commission meets at the beginning of its session to undertake a dialogue with the Governments concerned; and step 4, the Commission makes its decision on a course of action. The current procedure also has four stages and the above recommendation does not seem to simplify the process.

7. Regarding proposals made in documents E/CN.4/1999/120 and 124, in particular the proposal to request an additional meeting of the Working Group in order to screen communications, members of the Working Group considered that such an additional meeting would delay the process for a further year and it would not be easy to decide which communications to send to Governments without having the benefit of government replies. At the same time, they acknowledged that Governments should not be sent frivolous communications undeserving of their attention.

8. Members underlined that they needed the benefit of government replies in order to decide whether to transmit communications to the Sub-Commission. In this connection, members underlined that more than 80 per cent of communications received replies from Governments and that there had been a considerable increase in governmental cooperation in the process over the past several years.

9. Members agreed that the time-frame of the current procedure was lengthy. However, the Working Group recognized its value because Governments were given a minimum of 12 weeks to respond to communications and then, between the Sub-Commission and the Commission, had an opportunity to furnish informative and substantial replies and observations. Those delays were helpful in that they gave Governments the opportunity not only to respond, but also to consider ameliorative action.

10. The Working Group was of the opinion that the Bureau's criticism of the Commission's deliberations as being frequently devoid of either serious substantive consideration of the human rights issues or of genuine constructive dialogue might be well founded, but could not be attributed to the Sub-Commission or its Working Group.

Suggestions for improvement

11. The following suggestions were put forward:

(i) Recognizing that it is the principal responsibility of the Working Group to review communications, the Working Group on Communications may authorize the Chairman/Rapporteur to determine whether any of the communications received are so clearly lacking in merit that no government reply is required and if the Chairman/Rapporteur so determines, he/she may instruct the

secretariat that it is not necessary to forward communications to the Government. Any such exercise of authority is to be reported to the Working Group at its session and to be reviewed regularly;

(ii) The Working Group may submit questions to the authors of communications requesting further information;

(iii) Convinced that the Working Group and the Sub-Commission have initiated fruitful dialogue with Governments by informing them of the reasons for keeping communications pending, the Working Group suggests that this existing practice be formally authorized.

Other common observations

12. It was acknowledged that the Working Group on Communications and the Working Group on Situations have on occasion consulted or referred to material contained in United Nations documents and that the suggestion from the Bureau contained in recommendation 11 to authorize the examination of "any additional relevant information from other United Nations sources" deserved further consideration.

13. It was mentioned that the proposal that the Commission Chair should not only announce the names of the country considered but also the main issues of concern also merited further thought.

Annex II

HUMAN RIGHTS MACHINERY - COMPARATIVE MEETING COSTS

(Commission on Human Rights, Sub-Commission, Human Rights Committee, Committee on the Rights of the Child)

Section 22 "Human rights" (travel and daily subsistence allowance)

Account description	1998 (committed)	1999 (estimated)	Total
Commission on Human Rights	80 032	54 000	134 032
Sub-Commission	308 871	341 845	650 716
Human Rights Committee	541 041	482 400	1 023 441
Committee on the Rights of the Child	276 122	459 200	735 322

Section 27 E "Conference services" (meeting services)

Account description	1998 (estimated) a/	1999 (estimated) a/	Total
Commission on Human Rights	5 954 127	6 013 668	11 967 795
Sub-Commission	1 856 051	1 874 612	3 730 663
Human Rights Committee b/	2 809 185	2 837 277	5 646 462
Committee on the Rights of the Child b/	3 705 039	3 742 089	7 447 128

Total

Account description	1998	1999	Total
Commission on Human Rights	6 034 159	6 067 668	12 101 827
Sub-Commission	2 164 922	2 216 457	4 381 379
Human Rights Committee	3 350 226	3 319 677	6 669 903
Committee on the Rights of the Child	3 981 161	4 201 289	8 182 450

a/: data provided by UNOG Budget Section.
b/: Three meetings annually.